

Minutes of January 4, 1999

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, January 4, 1999 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 6:58 P. M. with Chairman McCabe presiding. The Board members present were: Mr. McCabe, Mr. Callaway, Mr. Mills, Mr. Hudson, Mr. Wheatley, Mr. Berl-Esquire, Mr. Rickard-Chief Zoning Inspector and Mrs. Talley-Recording Secretary.

Mr. McCabe asked for any additions or changes to the agenda. Hearing none, motion was made by Mr. Mills, seconded by Mr. Hudson and carried unanimously that the agenda for January 4, 1999 be adopted. Vote 5-0.

Motion was made by Mr. Mills, seconded by Mr. Hudson and carried unanimously that the minutes of December 21, 1998 be approved as circulated.

Mr. Berl read a statement explaining how the Board of Adjustment meeting is conducted and the procedure for hearing the cases.

Case No. 6779--Sylvia V. Candelora - South of Route 54, west of Hidden Acre Drive, Lot 27, Hidden Acres.
A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. Sylvia V. Candelora was sworn in and testified and was represented by Robert Witsil, Esquire. The applicant requested a 4.5' variance from the 5' side yard setback requirement. Mr. Witsil stated that the property, Lot 27, Hidden Acres, was willed to the applicant and when they went to settlement for selling the property, an encroachment of the existing garage was found. He made reference to a survey done by Mann Associates. The owner lives on Lot 26 and she was not aware of the encroachment until settlement and she saw the survey. She does not know when the garage was constructed. Mr. Witsil stated that when he researched records, he found the garage was constructed around 1992. The 15'x 18' garage has a concrete foundation and has vinyl siding. Mr. Witsil stated that prior to this meeting no one had any complaints about the garage.

James McAllister of Rehoboth, was sworn in and testified that he is the selling agent for the property, and that he was not aware of the encroachment prior to settlement.

Mr. Witsil stated that it is a hardship to the applicant and she is requesting a minimal variance.

Mildred Dorris of Wilmington, was sworn in and testified that she owns property adjacent and is in opposition. She stated that she had no problems with the previous owner, but is concerned about who will move on the property and what could happen in the future. She believes the garage was built in the early 90's. Ms. Dorris stated that they are seasonal people, but feels the garage is too close to her property line. She stated that there is a property stake in back of the shower stall that is behind the garage. She opposes the variance. In answer to Mr. Mills question, she stated that she does not plan to have her property surveyed.

Mr. Berl asked Ms. Dorris if she had done anything about the garage prior to this meeting.

In answer, Ms. Dorris, stated that she had not.

Mr. Witsil explained the survey and stated that the garage is on an angle because it is not parallel with the property line, so when looking at the stake referenced by Ms. Dorris, it could be at an angle and not behind the garage.

Mr. Mills explained to Ms. Dorris that if the variance is not approved the applicant would have to move the garage. He asked if she would object to a 1/2' variance from the property line.

Ms. Dorris stated that she would still be opposed to the variance because it would be too close to her property.

Motion was made by Mr. Mills, seconded by Mr. Wheatley and carried unanimously that the case be taken under advisement. Vote 5-0.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion was made by Mr. Callaway, seconded by Mr. Wheatley and carried unanimously that the case be tabled until the next meeting. Vote 5-0.

Case No. 6780--Geraldine Ludlam and Connie Heindel - Southeast of Road 258, 382 feet southwest of Road 88, Lot 1.

A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. Joel Leidy of Rehoboth, was sworn in and testified representing the applicants, who requested a 7' variance from the 15' side yard setback requirement to construct an addition on Lot 1. The applicants proposes to build a 16' wide bedroom addition onto their garage.

Mr. Leidy stated that there is no other way to construct the addition. Adjacent Lots 2 and 3 are vacant and there is a screen porch on the rear of the house and an open porch on the front of the house.

There were no parties present in opposition.

Motion was made by Mr. Callaway, seconded by Mr. Wheatley and carried unanimously that the variance be granted. Vote 5-0.

Case No. 6781--Garylee Cox - Northwest of Road 362, west of Hickory Street, Lot 15, Shady Dell Subdivision.
A variance from the front yard setback requirement.

The case was presented by Mr. Rickard. Garylee Cox was sworn in and testified, requesting a 15' variance from the 30' setback requirement from the front property line. Ms. Cox stated that she did not have a survey done when she purchased her property, being Lot 15, within Shady Dell Subdivision. When the lot was surveyed she realized that she and Luv Homes had measured wrong. She stated that the manufactured home had to be put closer to the front property line due to her septic and drain fields. She stated that the only people that are impacted are across the street. She stated that she has no opposition from the neighbors she has talked to.

There were no parties present in opposition.

Motion was made by Mr. Callaway, seconded by Mr. Mills and carried unanimously that the variance be granted. Vote 5-0.

Case No. 6782--Ronald T. & Cynthia Houston - West of Road 516, 1/2 mile north of Road 525.
A variance from the lot size requirement and a variance from the lot width requirement.

The case was presented by Mr. Rickard. Ronald T. Houston was sworn in and testified, requesting a 2,756 sq. ft. variance from the 32,670 sq. ft. lot size; a 10' variance from the 150' lot width requirement; a 99.58' variance from the 150' lot width requirement.

Mr. McCabe stated that the Board had approved variances for the applicants at a previous hearing, but due to a discrepancy, they had to reapply.

Mr. Houston stated that when a new survey was done by a

different surveyor, his house was 1/2 on his property and 1/2 on someone else. He wants to subdivide to correct his lot and have his daughter build a house on the rear parcel.

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mr. Callaway and carried unanimously that the variances be granted. Vote 5-0.

Case No. 6783--Eller Media Company - East of U.S. Route 13 North,
.4 mile north of Route 9.

A special use exception for an off-premise sign.

The case was presented by Mr. Rickard. Alexis O'Leary was sworn in and testified representing Eller Media Company, who requested to replace a 12'x 25' two sided billboard. She stated that the applicants will rebuild the sign and replace the wooden poles with steel. The sign will be put in the same exact spot, 300 sq. ft. in size and 25' in height. The applicants were previously denied a height variance.

There were no parties present in opposition.

Motion was made by Mr. Wheatley, and seconded by Mr. Hudson that the special use exception be granted, with Mr. Callaway and Mr. McCabe voting nay. The motion carried with three voting in favor and two voting against. Vote 3-2.

Case No. 6784--Patricia M. Martin - West of U. S. Route 13-A, 2,271
feet south of Road 460, Lot 2.

A special use exception for a commercial dog kennel and a variance from the setback requirements.

The case was presented by Mr. Rickard. Patricia Martin of Laurel, was sworn in and testified and was represented by Jim Fuqua, Esquire. The applicant requested a special use exception for a commercial dog kennel and a 192' variance from the 200' setback requirement for open runs and cages from all property lines. Mr. Fuqua stated that in his opinion a variance is not required for an on farm kennel. He read from the definition from the Zoning Code. He feels the use will not affect adversely other properties. He stated that Ms. Martin breeds dogs as a hobby, having one litter a year. She is employed full time as an X-Ray Technician. He stated that she grooms and trains her dogs and is involved with dog rescue, which involves taking in homeless dogs, evaluating them and finding homes for them.

Ms. Martin stated that after breeding her dogs and she is finished with them, they are retired and placed in homes. She stated that she does not board or do grooming for other people, unless they are family members. She stated that she has had her operation on the property since 1997, feeling that it was permitted since it is out of town limits. She stated that she has worked with dogs for 13 years, previously in Ocean City and elsewhere.

Mr. Fuqua stated that the property is unusual in shape and the dogs are at the extreme rear of the property within fenced areas. Pictures were submitted. He stated that the nature of the area is railroad tracks to the rear of the property, chicken houses, a B-1 district, Conditional Use, and chicken farm, also to the south of the property is a light industrial zoning (feed mill). He stated that the dogs are located 400 to 500 feet from the nearest residence. He presented letters from people voicing no objections to the application and read the names into the record: Jerry Shiry, Ruth Carter and Pauline Dickerson, Fred V. & Anna M. Gainer, Robert G. McKamey, S. M. McKamey, Betty Lucas and Susan E. Pusey. Mr. Fuqua stated that the use will not substantially adversely affect or impact the neighbors. Ms. Martin stated that everything Mr. Fuqua had stated was true. Mr. Fuqua stated that he had written some conditions to attach if the Board approved the special use exception and variance and wanted to use them. The conditions are as follows: 1) The applicant shall have no more than twelve (12) dogs over the age of six (6) months owned by applicant on this property at any time; 2) Applicant shall have no more than six (6) dogs not owned by the applicant on the property at any time (breeding, placement, training, etc.); 3) There shall be no public boarding of dogs.

In answer to Mr. Mills question, Ms. Martin stated that the people who signed the letters presented live to the south of the property, across the street and behind the railroad. She stated that her dogs do not run loose. She has applied for all permits and she does not share the driveway with the neighbors.

Mr. Rickard stated the the Zoning Inspector, Jeff Shockley, has checked the fence on the applicants property and she has met all requirements.

Mr. Callaway questioned why a fence was put up.

Mr. Fuqua stated that the one big drive-way was put in for both properties when Ms. Martin purchased her property. He stated that the neighbors have a pool and other peoples vehicles were coming onto her property parking and turning around, so the applicant put up a privacy fence.

Mr. Rickard read a letter of opposition from Jean G. Henry.

Brian Brown of Laurel, was sworn in and testified in opposition stating that he has been a neighbor for 8 years, that Ms. Martin's house was previously a rental; that a driveway has been shared with her property for 51 years; that he has two children and he coaches young children on his property. He has concerns about the applicants dogs getting loose and coming onto his property. The fence causes problems with vehicles coming onto his property and he does not want the children to cross the road to get to his property. He has concerns about the rotweiler dogs the applicant has; dogs barking for 24 hours a day and getting loose and a child getting hurt. He stated that he has trouble getting into his yard since the fence has been put up and that no emergency vehicle can get onto the property from the driveway. Pictures of the driveway were shown.

Mr. Berl, Esquire, stated that the driveway dispute is not an issue before the Board and the Board is not the proper people to talk to about it. The issue before the Board is the dog kennel and variance.

Mr. Brown stated that he has concerns about what other breed of dogs she may put on the property. He stated that he has a dog that he keeps in a kennel, which is a mutt, a dog he found along the road and took to raise for fear of it being killed.

The Board took a recess. The Chairman called the meeting back into session at 8:17 P. M.

Gregg Littleton who lives in the area, was sworn in and testified in opposition, stating that he has chicken houses. He asked if the 12 dogs the applicant will have included puppies. He assumed the applicant had permits when she built the kennels. He expressed concern about the rotweiler dogs the applicant has and the safety of his wife and grandchildren and questioned what other kinds of dogs she would have. He is opposed to the dogs.

Mr. Rickard read the definition of a dog kennel from the Zoning Code.

Wanda Quackenbush of Laurel, was sworn in and testified in opposition, stating that she is an immediate neighbor, who goes to work at 6:00 A.M. and can hear the dogs, but does not know where they are. She expressed concern about the dogs; her fear of them, odor, and barking. She fears children will get hurt if the dogs get loose.

In rebuttal, Mr. Fuqua stated that the use has been on the property for 14 months with no complaints prior to this hearing and that dogs cannot run loose. He made reference to a dog bite complaint about Ms. Quackenbush's dog. He presented a copy of the dog bite complaint. He stated that the applicant can have five dogs legally and not have a commercial kennel. He mentioned that other dogs live in the area and that Ms. Martin's dogs have bark collars on them, which make the barking quieter. He feels the special use exception should be granted, that it is not a pure residential area, Ms. Martin raises the dogs as a hobby, wants the amount capped at 12 dogs and she is not going to have numerous puppies.

Mr. Brown stated that the complaint referenced by Mr. Fuqua, the charges were dropped. They are not sure whose dog it was.

Ms. Quackenbush stated that if the dogs get on the dog house they could jump the fence.

Mr. Mills asked the applicant if there would be a problem with certain breeds of dogs being allowed if approved.

Ms. Martin stated that there would be a problem with allowing certain breeds of dogs.

Motion was made by Mr. Mills, seconded by Mr. Callaway and carried unanimously that the case be tabled until the next meeting. Vote 5-0.

Case No. 6785--Earl Warren - West of Road 271, 1,250 feet northeast of Railroad and 0.8 mile northeast of Route One.

A variance from the setback requirement for housing of cattle.

The case was presented by Mr. Rickard. Earl Warren was sworn in and testified requesting a 95' variance from the 100' setback requirement for housing of cattle. The applicant would like to build a pole structure to house cattle. Because of a division of the property to preserve the farm. The adjacent property is a preservation field purchased by the State of Delaware. Mr. Warren stated that he wants to modernize and keep the property as a dairy farm.

Mr. Rickard read a letter from DNREC, Division of Parks and Recreation, Charles A. Salkin, Director, stating no objections to the application.

There were no parties present in opposition.

Motion was made by Mr. Hudson, seconded by Mr. Callaway and carried unanimously that the variance be granted. Vote 5-0.

OLD BUSINESS

Case No. 6744 (cont'd.)--Pelican Square - West of Route One,
intersection south of Road 283.

A variance from sign requirements.

The case was reviewed by Mr. McCabe.

After some discussion, the following sign variance's were granted:

1. Motion was made by Mr. Callaway, seconded by Mr. Mills and carried unanimously to grant (1) 120 sq. ft. wall sign on building A.

2. Motion was made by Mr. Callaway, seconded by Mr. Mills and carried unanimously to grant a 2nd. wall sign of 100 sq. ft. on building A.

3. Motion was made by Mr. Callaway, seconded by Mr. Wheatley and carried unanimously to grant a 158 sq. ft. variance for a wall sign. Vote 5-0.

4. Motion was made by Mr. Mills, seconded by Mr. Callaway and carried unanimously to grant a 100 sq. ft. wall sign as requested. Vote 5-0.

5. Motion was made by Mr. Mills, seconded by Mr. Callaway and carried unanimously to grant a 100 sq. ft. wall sign as requested. Vote 5-0.

6. Motion was made by Mr. Mills, seconded by Mr. Callaway and carried unanimously to grant a 10.5 sq. ft. variance for a wall sign. Vote 5-0.

7. Motion was made by Mr. Callaway, seconded by Mr. Mills and carried unanimously to grant (1) directional sign on Route 283 and to deny a 2nd. directional sign on the south side of Route 1. Vote 5-0.

8. Motion was made by Mr. Callaway, seconded by Mr. Mills and carried unanimously to grant (1) 170 sq. ft. pylon sign. Vote 5-0.

Case No. 6773 (cont'd.)--Clifford E. Hughes, Jr. - South of Route
16, 155 feet east of Road 610.
A variance from the lot width requirement.

The case was reviewed by Mr. McCabe.

After some discussion, motion was made by Mr. Callaway,
seconded by Mr. Mills and carried unanimously that the variance be
granted. Vote 5-0.

Case No. 6776 (cont.'d.)--Roberta C. Brennan - West of Road 449,
2,642 feet north of Road 450.
A special use exception for a commercial dog kennel
and a variance from the setback requirement.

The case was reviewed by Mr. McCabe.

Motion was made by Mr. Mills, seconded by Mr. Callaway and
carried unanimously that the case be tabled until the next meeting.
Vote 5-0.

Case No. 6777 (cont'd.)--Richard L. Cox - East of Road 510, 600
feet north of Route 54.
A variance from the lot width requirement.

The case was reviewed by Mr. McCabe.

Mr. Rickard stated that Jeff Shockley, Zoning Inspector, had
visited the site and said everything is in order, that there are
two manufactured homes on the property, one being on medical
hardship.

After some discussion, motion was made by Mr. Callaway,
seconded by Mr. Mills and carried unanimously that the variance be
granted as requested. Vote 5-0.

Motion was made by Mr. Mills, seconded by Mr. Callaway and
carried unanimously that the meeting be adjourned. Vote 5-0.

Meeting adjourned at 9:20 P. M.